

**FREQUENTLY ASKED QUESTIONS (“FAQs”) ABOUT APPEALING AN UNEMPLOYMENT INSURANCE  
DECISION OF THE LABOR AND INDUSTRY REVIEW COMMISSION TO A WISCONSIN CIRCUIT COURT**

**DISCLAIMER:** The following “Frequently Asked Questions” are intended solely as a guideline for those appealing unemployment insurance decisions of the Labor and Industry Review Commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The information does not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for the filing and processing of an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

**1. Do I need an attorney to appeal a commission decision to court?**

If you are an individual employee or benefit claimant, you may represent yourself in court. If you choose to have someone represent you, the representative must be an attorney.

If you are an employer, whether or not you need an attorney depends on how your business is organized. If you are doing business as a sole proprietor, you do not need an attorney to appeal to court. However, if your business is organized as a corporation, a limited liability company (LLC), a partnership, a firm, an association, or a cooperative, you must be represented by an attorney in any appeal to court. It is the business's responsibility to determine whether it can or cannot be represented by a non-attorney in legal proceedings before courts.

**2. How do I appeal the commission decision?**

You must file a summons and a complaint with the circuit court of Wisconsin within 30 calendar days from the date the decision was mailed to you (not counting the date the decision was mailed to you). When you file the summons and the complaint with the court, take additional copies with you and ask the court clerk to stamp those copies so they show the date they were filed and the case number. Once stamped, these are called “authenticated copies.” You must then “serve” authenticated copies on the commission either in person or by mail. These authenticated copies must be received by the commission at its offices in Madison within 30 calendar days of the date the decision was mailed. You must serve as many authenticated copies of the documents on the commission as there are defendants. The commission must receive the authenticated summons and the complaint within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline. Section 102.23 of the Wisconsin statutes governs appeals of commission unemployment decisions and is the exclusive method for appealing commission unemployment decisions to circuit court.

Sample forms for a summons and a complaint that you may find helpful in preparing your documents, can be obtained here: <http://dwd.wisconsin.gov/lirc/appeal/summonsandcomplaintforms.htm>. You are responsible for filing the correct documents.

**DISCLAIMER:** The sample summons and complaint forms made available by the Labor and Industry Review Commission are intended solely as a guideline for those appealing decisions of the commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The forms do not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for the filing and processing of an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

**3. Where do I file the summons and the complaint?**

The summons and the complaint must be filed in the circuit court of the Wisconsin county where the plaintiff resides, except:

- If the plaintiff is a state agency, the proceedings must be in the circuit court of the Wisconsin county where the defendant resides.
- If the plaintiff is a nonresident of Wisconsin, the proceedings must be in the Wisconsin county where the claim arose.
- The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.
- For other circumstances, venue is as set forth in Wis. Stat. §801.50(2)(a).

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts: <http://www.wicourts.gov/contact/ccsites.htm>

**4. The commission decision allows me unemployment benefits. If there is an appeal, will I still receive my benefits or continue to receive my benefits?**

Yes. If you are otherwise eligible and continue filing claims for benefits, you should continue to receive benefits while the appeal is pending. To file a claim for unemployment benefits, please see <https://ucclaim-wi.org/InternetInitialClaims/default.asp>.

**5. The commission decision denies my unemployment benefits and I am appealing. Should I continue to file claims for weeks for which I want to receive benefits?**

Yes. If you do not file claims for weeks you are unemployed, you will not be eligible for benefits for those weeks even if the decision is overturned on appeal. To file a claim for unemployment benefits, please see <https://ucclaim-wi.org/InternetInitialClaims/default.asp>

**6. I have a decision by the administrative law judge or appeal tribunal. Can I appeal this decision to the circuit court?**

No. A decision of the appeal tribunal by an administrative law judge must be appealed to the commission. The commission must issue its decision before the action may be filed in the circuit court.

If you need to appeal a decision of an appeal tribunal of an administrative law judge or appeal tribunal decision to the commission, please see <http://dwd.wisconsin.gov/lirc/petition.htm>

**7. Is there a fee for filing a circuit court action to review the commission decision?**

No. A court clerk should not charge a filing fee for review of an unemployment insurance commission decision. See §102.26 of the Wisconsin statutes.

**8. What are the summons and the complaint?**

The summons is a document that notifies the defendants that a case has been filed against them and tells them their responsibility to file an answer with the court. The complaint is a separate document that states who the parties are and the reasons for the lawsuit.

**9. Can the commission help me draft the summons and the complaint?**

No. When you file an appeal of the commission decision, you are suing the commission. As a defendant, the commission will defend its decision in the court action. The commission cannot help you draft the summons and the complaint or provide legal advice regarding an appeal.

**10. Who can assist me if I want to appeal the commission decision?**

When you file an appeal of the commission decision, you are suing the commission. As a defendant, the commission will defend its decision in the court action. The commission cannot help you draft the summons and the complaint or provide legal advice regarding an appeal. You may want to contact an attorney.

**11. Who must sign the summons and the complaint documents?**

The plaintiff must sign both the summons and the complaint. If the plaintiff is a corporation or an LLC (limited liability company), the summons and the complaint must be signed by an attorney. Corporations and LLCs must be represented by an attorney in order to file legal proceedings with a court.

**12. What are “authenticated copies” of documents?**

“Authenticated copies” are copies of the original documents that are stamped by the clerk of the circuit court when the case is filed. The authenticated copies show that the action was filed and the case number.

**13. Who is the defendant in a disputed benefits case?**

A disputed benefits case is a case in which a claimant’s eligibility for unemployment benefits is at issue. The commission must be named as a defendant. In addition, any other adverse party or parties must also be named as defendants. An adverse party is a party in whose favor the decision was made. For disputed benefits cases, the prevailing employer or employee must be joined as a defendant in addition to the commission. This generally includes the party or parties listed in the caption on the first page of the commission decision.

The Department of Workforce Development should not be named as an adverse party in disputed benefit cases unless the department was a party before the commission.

**14. Who is the defendant in a tax liability, employer coverage or successorship related case?**

A tax liability case is a case in which an employer’s liability for unemployment insurance taxes is at issue. An employer coverage case is a case in which the issue is whether an employer is covered by the unemployment insurance program and

must pay unemployment insurance taxes. A successorship related case involves issues of whether an employer that took over another business may be treated as the same employer for unemployment insurance tax purposes.

For these cases, the commission must be named as a defendant. For tax liability, employer coverage, or successor related cases, the Department of Workforce Development must be joined as a defendant in addition to the commission. In addition, any other adverse party or parties must also be named as defendants. An adverse party is a party in whose favor the decision was made. This generally includes the party or parties listed in the caption on the first page of the commission decision and the department.

**15. Can I file the summons and the complaint in another state if I am not a Wisconsin resident?**

No. The action must be brought in a Wisconsin circuit court.

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts:  
<http://www.wicourts.gov/contact/ccsites.htm>

**16. When must I file an appeal? What is the appeal deadline?**

You must file the summons and the complaint and serve authenticated copies on the commission within 30 calendar days of the date the decision was mailed to you. The commission must receive the authenticated summons and the complaint at its offices in Madison within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline.

**17. How do I “serve” authenticated copies of the summons and the complaint on the commission?**

The authenticated summons and the complaint may be mailed to the commission or delivered in person. You must serve a commissioner or an agent authorized by the commission to accept service. Authorized agents are staff members at the commission. The commission must **receive** the authenticated summons and the complaint at its offices in Madison within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline.

For delivery by private carrier or service in person:

Labor and Industry Review Commission  
3319 West Beltline Highway, 2 West  
Madison WI 53713

For delivery by U.S. Postal Service:

Labor and Industry Review Commission  
P.O. Box 8126  
Madison WI 53708

The commission is open Monday through Friday from 7:45 a.m. to 4:30 p.m. except for holidays.

You **cannot** serve the authenticated summons and complaint by FAX or e-mail.

**18. How many copies of the authenticated summons and the complaint do I need to serve on the commission if I am appealing a disputed benefits case?**

A disputed benefits case is a case in which a claimant’s eligibility for unemployment benefits is at issue. You must serve as many copies of the authenticated summons and the complaint as there are defendants. The commission is one defendant. If an employer or employee also was part of the case before the commission, that entity or person also must be named as a defendant. The Department of Workforce Development should not be named as an adverse party in disputed benefits cases unless the department was a party before the commission.

**19. How many copies of the authenticated summons and the complaint do I need to serve on the commission if I am appealing a tax liability, employer coverage or successorship related case?**

A tax liability case is a case in which an employer’s liability for unemployment insurance taxes is at issue. An employer coverage case is a case in which the issue is whether an employer is covered by the unemployment insurance program. A successorship related case involves issues of whether an employer that took over another business may be treated as the same employer for unemployment insurance tax purposes.

You must serve as many copies of the authenticated summons and the complaint as there are defendants. The commission is one defendant. The Department of Workforce Development must be a defendant in addition to the commission, so at least two copies must be served on the commission. In addition, any other adverse party or parties must also be named as defendants and copies must be provided to the commission for any additional defendants.

## **20. Can I bring my appeal of the commission's decision in small claims court?**

No. You must bring your appeal in the regular circuit court. The procedures of the small claims court do not apply to appeals of commission decisions under the unemployment insurance program.

## **21. Can I bring my appeal of the commission's decision under the Administrative Procedures Act, chapter 227, by filing and serving a petition naming the commission as a respondent?**

No. You must bring your appeal by filing a summons and a complaint that makes the commission and any "adverse party" defendants. The provisions of the Administrative Procedures Act in chapter 227 do not apply to appeals of commission decisions under the unemployment insurance program.

## **22. How does a court review the commission decision?**

The court will review the record on appeal. The court will **not** hold a new hearing. Generally, courts assign a schedule for each party to submit written arguments or briefs. Occasionally courts schedule in-person arguments on the legal issues in the case. Courts may not make new findings of fact on appeal and generally give deference to the commission's legal conclusions. The reasons the commission decision may be overturned by a circuit court are limited by statute. Those reasons are stated in subsections (1)(e) and (6) of Sec. 102.23 of the Wisconsin statutes. See, <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=102.23>. Generally, to overturn a commission decision, a court must find that the commission acted without or in excess of its powers in making its decision, or that the findings of fact by the commission do not support its decision.

## **23. How long will it take for the court to decide my case?**

It is hard to predict how long a circuit court will take to decide a case. Once the summons and the complaint are filed and authenticated copies are served on the commission, the commission must file an answer and respond to the complaint. In some cases, the commission may file a motion to dismiss. The court schedules the timing of filing briefs by the parties. Once all of the issues have been briefed, the court will review the record and the briefs and write a decision. The time this takes will vary with each court.

## **24. Who can I call with questions regarding unemployment benefits?**

For questions regarding your benefit claims, you may contact the Department of Workforce Development at 1-800-494-4944. This is a link to the Unemployment Insurance Claimant Handbook: <http://dwd.wisconsin.gov/uiben/handbook/default.htm>

## **25. Who can I call with questions regarding an unemployment insurance benefit overpayment?**

For questions regarding an overpayment of benefits, you may contact the Department of Workforce Development at 1-608-266-9701.

## **26. If I am an employer, who can assist me with questions regarding my unemployment insurance taxes?**

For claim inquiries or assistance, you may contact the Department of Workforce Development at 1-800-247-1744. This is a link to the Unemployment Insurance Employer Handbook: <http://dwd.wisconsin.gov/ui201/>

## **27. Where else can I find information regarding the unemployment insurance program?**

How to apply for unemployment benefits:  
<https://ucclaim-wi.org/InternetInitialClaims/default.asp>

Frequently asked questions about filing for unemployment benefits:  
<http://dwd.wisconsin.gov/uiben/benfaq1.htm>

How to file an appeal of a department initial determination:  
<http://dwd.wisconsin.gov/uibola/appeal.htm>

Frequently asked questions about appeal tribunal hearings:  
<http://dwd.wisconsin.gov/uibola/FAQs-12-01/>

How to appeal an appeal tribunal decision to the commission:  
<http://dwd.wisconsin.gov/lirc/petition.htm>

Frequently asked questions about appeals, benefit claims, benefit fraud, new hire reporting, quarterly wage reporting, tax and accounting and tax collections:  
<http://dwd.wisconsin.gov/ui/admin/faqs/faqs.htm>

To report unemployment fraud:  
<http://dwd.wisconsin.gov/uiben/contac.htm>